

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 976 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PATEL NARAN THAKERSHI & 3 OTHERS

Appearance:

MR.S.T.MEHTA PUBLIC PROSECUTOR for Appellant.

MR BHARGAV N BHATT for Respondent No. 1, 2, 3, 4
(Absent).

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 05/08/96

ORAL JUDGEMENT

This acquittal appeal arises from the judgment and order dated August 4, 1990 passed by the learned Judicial Magistrate First Class, Godhra, in Criminal Case

No.251/86. By the impugned order, the learned Magistrate ordered to acquit the respondent-accused persons for the offences punishable under sections 323,324 and 326 read with sec.114 of the Indian Penal Code.

It is the prosecution-case that the accused persons had suspicion on the sons of P.W.1 Kalyan Ravji that they had been writing some filthy letters on them. The accused persons being enraged by such letters, caused grievous hurt by means of axe and Dharia and iron pipe on P.W.1 Kalyan Ravji at about 7.00 a.m. on May 14,1996. The injured was medically examined and the medical certificate at Exh.18 was issued in this behalf. Necessary Panchnama was drawn and on completion of the investigation, the charge for the aforesaid offences was submitted against the accused persons.

The accused persons denied the charge and claimed to be tried.

The learned Magistrate acquitted the accused persons, holding, inter alia, that the evidence of the complainant P.W.1, Kalyan Ravji, was not supported by any independent evidence. Mr.S.T.Mehta, learned Addl. Public Prosecutor, appearing for the appellant-State, has taken me through the relevant record and the impugned judgment. He submitted that the learned Magistrate having relied upon the medical evidence coupled with the sworn testimony of the complainant, acquitted the accused persons. On considering the evidence on record, in my opinion, the view taken by the learned Magistrate is possible and it cannot be interfered with. Admittedly, the Panch witnesses have not supported the prosecution case. Both the Panch witnesses were declared hostile. Eye-witnesses Ukabhai Valabhai and Parbatbhai Lakhabhai also did not support the prosecution case. Both the witnesses were treated as hostile witnesses. The only evidence with regard to the incident is of P.W.1 Kalyan Ravji, the complainant. On considering the evidence on record, there are infirmities in his evidence. The incident is said to have taken place at about 5.30 in the morning on May 14,1986, whereas in the complaint the incident is alleged to have occurred at about 7.00 in the morning. The complainant, P.W.1, Kalyan Ravji deposed that he was assaulted by means of axe, in the complaint, Exh.12, whereas in his deposition he has stated that a Dharia blow was given to him. It is true that the evidence of the Medical Officer, P.W.4, Chandrakant

Kantilal Exh.16 supports that the complainant Kalyan Ravji was caused injuries. However, when the independent witnesses, who have witnessed the incident do not support the prosecution case and the Panch witness is declared hostile, the finding of acquittal recorded by the learned Magistrate could not be disturbed, having regard to the law relating to acquittal-appeal.

It is settled law that the appellate Court while dealing with the acquittal-appeal should be slow to interfere with the acquittal order, unless great prejudice or perverse judgment of the trial Court is shown. When two views are possible, the view in favour of the accused is to be adopted. In the facts and circumstances of the present case, the order of acquittal appears to be justified, for the reason that the independent eye-witnesses do not support the version of the complainant. When there are infirmities in the evidence of the complainant, it is necessary that such version is corroborated by independent and impartial evidence. It is lacking in the present case. The learned Magistrate has, therefore, rightly recorded the order of acquittal.

In the above view of the matter, there being no substance in the appeal, it is dismissed.
